

<b>COMPLIANCE BOARD OPINION NO. 98-6</b>
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August 3, 1998

*Ms. Pamela N. Morgan*

The Open Meetings Compliance Board has considered your complaint of May 6, 1998, that the Town Council of Garrett Park violated the Maryland Open Meetings Act at a meeting on April 26, 1998. In considering this matter, the Compliance Board reviewed your complaint; the response dated June 10, 1998, submitted on behalf of the Town of Garrett Park by its attorney, Mr. David R. Podolsky, Esquire; and a supplemental response dated July 14, 1998, submitted by Mr. Podolsky in response to an inquiry from the Compliance Board. For the reasons stated below, the Compliance Board finds that the Open Meetings Act was not violated.<sup>1</sup>

**I**

**Background**

Your complaint asserted that on Saturday, April 25, 1998, Councilmember Fischman, one of the five members of the Town Council of Garrett Park, approached two other council members to schedule a meeting for the next morning, Sunday, April 26, to discuss repairs to the Town Hall. This matter, you alleged, “had been outstanding for some time and was not of an urgent nature. Minimal planning would have been needed to schedule and announce the meeting ahead of time as required by law.” On the morning of April 26, Councilmember Morgan “tried to reach the other councilmembers to postpone the meeting.” He was not able to reach them, however, and so went to the home of Councilmember Schwartz, where the meeting was to be held. The three council members, according to your letter, “gathered outside the home of Mr. Schwartz.”

In his June 10 response on behalf of the Town, Mr. Podolsky provided the following account of the background to the April 26 gathering: Councilmember Fischman was

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<sup>1</sup> You included in your letter allegations that laws other than the Open Meetings Act were violated. The Compliance Board has no jurisdiction over matters other than alleged violations of the Act and therefore cannot address your other concerns.

responsible for operation of the Town Hall, including “preparing specifications and obtaining for architectural and engineering services in connection with possible repairs and/or renovations to the Town Hall. A bid from an architect was received, but the bid was more expensive than had been anticipated. Ms. Fischman decided to look into revising the request for proposals or obtaining additional bids to reduce the cost of this project.”

As part of this effort, Ms. Fischman invited Mr. Gordon, an architect who lived in the Town, to offer his advice to her and Messrs. Morgan and Schwartz. The meeting was to occur at Mr. Schwartz’s house. After Mr. Morgan left a message indicating that he wished not to attend what he presumed would be a meeting of the Town Council in violation of the Open Meetings Act, the two other council members agreed that he should not attend the meeting. “Mr. Morgan did not enter Mr. Schwartz’s house and was not present during the conversation on this subject among Mr. Schwartz, Ms. Fischman and Mr. Gordon. When Mr. Morgan saw Mr. Schwartz and Ms. Fischman outside of Mr. Schwartz’s house, after advising that he would not attend the ‘meeting’ and prior to departing, he indicated that he favored obtaining more estimates and preferred radiator heat as opposed to forced air heating.”

In his supplemental response of July 14, Mr. Podolsky stated that “Councilmember Fischman’s attempt to obtain the advice of Mr. Gordon and Councilmembers Morgan and Schwartz was *not* part of the process of deciding whether to accept or reject the proposed contract with the architect. Councilmember Fischman had already decided not to accept the bid which had been received from the architect.... [A]t the time she sought advice from Messrs. Schwartz and Morgan, the bid had been rejected and she was seeking advice as to how she might adjust for proposals to obtain new bids.” In particular, Mr. Podolsky wrote, “Councilmember Morgan’s comments regarding additional estimates and radiator heating did not relate to the decision of whether to go forward with the architect’s proposed contract because that decision had already been made. Councilmember Morgan’s comments related to possible new specifications which Ms. Fischman was preparing as Councilmember charged with the Town Hall portfolio.”

## II

### Analysis

Under the Open Meetings Act, a meeting is a convening of “a quorum of a public body for the consideration of a transaction of public business.” §10-502(g) of the State Government Article, Maryland Code. For purposes of this opinion, the Compliance Board will assume, without deciding, that the brief discussion among the three council members

outside of Mr. Schwartz's house was a "meeting." Nevertheless, even assuming that the discussion was a meeting, it was not covered by the Open Meetings Act.

With exceptions not pertinent here, the Act does not apply to a meeting at which the topic of discussion is an "executive function." §10-503(a)(1)(i).<sup>2</sup> The first step in the analysis is to decide whether the matter under discussion falls within any of the other "functions" defined in the Act. If a discussion falls within another defined function, the discussion cannot be considered an "executive function." §10-502(d)(2).

One of these functions is a "quasi-legislative function." Its definition includes "the process or act of ... approving, disapproving, or amending a contract." §10-502(j)(3). In this instance, according to Mr. Podolsky's supplemental response, the brief discussion among the three council members did not concern the disapproval of the proposed contract with the architect, for that proposal had already been rejected by Ms. Fischman. Nor was the discussion encompassed by the other elements of the "legislative function," for the discussion was not part of the process by which the Council enacts laws or approves, disapproves, or amends its budget. Rather, the discussion is best understood as relating to the carrying out of Ms. Fischman's administrative duties – an executive function.

Therefore, even if the discussion were a meeting, it was excluded from the Act. The Compliance Board finds no violation.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.  
Courtney McKeldin  
Tyler G. Webb

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<sup>2</sup> Discussion of the "executive function" exclusion may be found in numerous opinions of the Compliance Board, including Opinions 92-2 (October 23, 1992), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* (hereafter "*Official Opinions*") 6; 92-3 (November 9, 1992), *reprinted in 1 Official Opinions* 10; 92-5 (December 22, 1992), *reprinted in 1 Official Opinions* 16; 93-2 (January 7, 1993), *reprinted in 1 Official Opinions* 23; 93-4 (February 24, 1993), *reprinted in 1 Official Opinions* 30; 94-7 (August 16, 1994), *reprinted in 1 Official Opinions* 96; 95-2 (June 20, 1995), *reprinted in 1 Official Opinions* 113; 95-5 (October 18, 1995), *reprinted in 1 Official Opinions* 123; 95-7 (October 18, 1995), *reprinted in 1 Official Opinions* 129; 95-8 (November 2, 1995), *reprinted in 1 Official Opinions* 133; 96-5 (May 1, 1996), *reprinted in 1 Official Opinions* 166; 97-7 (May 13, 1997), *reprinted in 1 Official Opinions* 227; and 97-14 (August 22, 1997), *reprinted in 1 Official Opinions* 252.